IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELALTE JURISDICTION

SECOND APPEAL NO.325 OF 1989

Sakharam Laxman Mathane
since deceased by his heirs and L/Rs.
1. Rangubai Sakharam Mathane
2. Laxman Sakharam Mathane
3. Tarubai Hanmant Bhosale
4. Miratai Tukaram Dige
5. Hiratai Kisan Jadhav
6. Gangubai Kisan Borage
7. Sakhubai Umaji Kale

All residing at Nade Tal. Patan,
Dist. Satara. .. Appellants.

Vs.

1. Laxman Bahiru Dige, deceased by his heirs and L/Rs.
(a) Smt. Sonabai Laxman Dige since deceased through her L/Rs. as 1(b), 1(c) and 1(d)
(b) Parshuram Laxman Dige.
(c) Smt. Sakhubai W/o Shankar Dige,
(d) Smt. Yeshwada Pandurang Desai

(2) Shankar Laxman Dighe
Deceased by his heirs:-
(2A) Sakhubai W/o Shankar Dige
(2B) Sonabai W/o Laxman Dige. ..Respondents.

Mr. S.G. Karandikar for the appellants.

Shri H.D. Gole for respondents.

CORAM : ANOOP V.MOHTA J.
DATE : 22ND DECEMBER, 2005.

ORAL JUDGMENT

. This is a second appeal filed by the appellant

original plaintiff and thereby sought to challenge the concurrent findings given by the Courts below, of dismissing the suit for declaration that the agreement dated 1st February, 1966, was void and illegal and the defendant has no right to retain the possession of the property on the strength of said agreement to sale and prayer for possession of the suit property. The appeal was admitted on 31/8/1989 on the following substantial questions of law;

Whether the defence of Section 53-A of Transfer of Property Act (T.P.Act), was available to the respondents in the facts and circumstances of the case.

2. The appellant-plaintiff being the owner of the land bearing survey No. 143/11, of village Nade, Tal. Patan, on 1ast February, 1966, entered into an agreement for sale in favour of the defendants (Exh. 57). Based on the said agreement the defendants are in possession. The defendants issued the notice and called upon the plaintiff to execute the sale deed. Some time in the year 1979, a civil suit No. 17/1979 for specific performance was filed by the defendants, as the plaintiff failed to execute the sale deed. On

16/10/1972 the said suit was dismissed for default. Some time in the year 1973, the appellant preferred the present suit for declaration and possession. The defendants however, by written statement resisted the said suit. The amendment to claim specific performance by way of counter-claim was rejected. The Hon'ble High Court in the revision confirmed the said rejection order. Parties led evidence. By an order dated 19th February, 1982, Civil Judge, Sr. Division Patan (trial Court) dismissed the suit holding that the plaintiff-appellant failed to prove the suit agreement for sale dated 1/2/1966 to be void or bogus. The trial Court further held that the defendants-respondents proved that they are entitled to protect the possession under the provisions of section 53-A of the T.P.Act, thereby, rejected the prayer of the appellant for possession of suit land.

3. The original appellant-plaintiff therefore, preferred, the appeal in the District Court of Satara (Lower Appellate Court). The Lower Appellate Court after considering the rival contentions further declared that the respondents-defendants have proved that they were inducted in the possession of the property in part

performance of the agreement for sale and they are entitled to the protection under section 53A of the T.P.Act and thereby dismissed the appeal.

4. Heard the learned counsel appearing for the parties. Relying on **(D.S. Parvthamma V. A. Srinivasan) (2003) 4 Supreme Court Cases 705** and **(Shrimant Shamrao Surawanshi and another V. Pralhad Bhairoba Surayawanshi and another) 2002 (2) Mh.L.J. 1** the Counsel for the appellant contended that there was no specific pleading, of his willingness to perform his part of contract, was raised in the written statement. There were no compliance on his part. Therefore, in absence of such pleadings and evidence, both the Courts ought not to have dismissed the suit.

5. The Counsel for the respondents resisted the suit and contended that there is a clear finding given by both the Courts below that the defendants-respondents were ready and willing to perform their part of the contract and in fact had performed their part of the contract. They further contended that the basic ingredients as available under section 53A of T.P.Act have been fulfilled and therefore, both the Courts are

right in protecting his possession under section 53A of the T.P.Act.

6. In **Shrimant** (Supra) para 16 and 17 are relevant which are as under;

" But there are certain conditions which are required to be fulfilled, if a transferee wants to defend or protect his possession under section 53A of the Act. The necessary conditions are -

(1) there must be contract to transfer for consideration any immovable property;

(2) the contract must be in writing, signed by the transferor, or by someone on his behalf;

(3) the writing must be in such words from which the terms necessary to construe the transfer can be ascertained;

(4) the transferee must in part performance of the contract take possession of the property, or of any part thereof;

(5) the transferee must have done some act in furtherance of the contract; and

(6) the transferee must have performed or be willing to perform his part of the contract.

. We are, therefore, of the opinion that if the conditions enumerated above are complied with, the law of limitation does not come in the way of defendant taking plea under Section 53-A of the Act to protect his possession of the suit property even though a suit for specific performance of a contract has barred by limitation."

In the present case, there is undisputed position that

there was contract to transfer the immovable property for consideration. The contract was in writing, signed by the parties. The writing was clear to consider the transfer. Both the parties have performed their respective part of contract and acted accordingly in pursuance of the same. Admittedly, the respondents-defendants since the day of the agreement has been in possession of the property in question. Strikingly, lastly the respondents-defendants had performed their part of contract by paying full consideration of the amount as agreed between the parties. There was nothing remained to be paid so far as, basic consideration in the present case. In view of this, undisputed position on record, I see there is no reason to interfere with the concurrent findings given by the Courts below.

7. Both the Courts in the facts and circumstances of the case have taken note of the basic ingredients of section 53A of T.P.Act as reflected above and as referred above by the Apex Court in above said decisions. Having once complied with those ingredients and which concurrently accepted by the Courts below, based on the material available on the record, there is

no reason to disturb the said findings.

8. Taking all this into account there remained no doubt that the defendants are entitled to protect the possession under the provisions of section 53-A of the T.P.Act, as they have been inducted in the possession of the property in part performance of the agreement for sale in question. The question of law answered accordingly.

. The Second Appeal therefore, is dismissed with no order as to cost.

[ANOOP V. MOHTA, J.]